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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
		449122025500
	Application Number	Filed
	10/088,683	July 9, 2002
	First Named Inventor Antonius EMMERINK et al.	
	Art Unit	Examiner
	2616	R. C. Scheibel
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>43,636</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p> Signature</p> <p><u>Deborah S. Gladstein</u> Typed or printed name</p> <p><u>(703) 760-7753</u> Telephone number</p> <p><u>June 22, 2007</u> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>		



Docket No.: 449122025500
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Antonius EMMERINK et al.

Application No.: 10/088,683

Confirmation No.: 4836

Filed: July 9, 2002

Art Unit: 2616

For: COMMUNICATIONS SYSTEM

Examiner: R. C. Scheibel

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request review of the Action mailed February 22, 2007 for the reasons set forth below. Applicants are filing a Notice of Appeal Concurrently herewith.

**I. CLAIMS 1-17 HAVE BEEN IMPROPERLY REJECTED UNDER 35 USC 102(e)
AS ANTICIPATED BY GARDNER**

Claims 1-17 stand rejected under 35 USC 102(e) as being anticipated by Gardner, U.S.
Patent No. 6,982,950.

Claim 1 recites:

1. A method for setting up and/or clearing a
communications link *via communication devices of at least a first
and a second type*, comprising:

signaling the at least first and second type of communication devices to control the setting up and/or clearing of the communications link; and
setting up and/or clearing the connection for the first type via at least one decentralized switching device, wherein the signaling takes place from a central device.

The Examiner has asserted that Gardner's first switching system 206 and Gardner's second switching system 208 correspond to the claimed first and second types of communication devices. However, claim 1 distinguishes between "switches" and "communication devices." Gardner, on the other hand, teaches a tandem system 204 which connects calls between the switching systems 206 and 208 (col. 5, lines 42-43). A switching system is not the same as a communication device. Further, although Gardner may disclose sending messages identifying selected connections, Gardner does not teach signaling the first and second types of communication devices. Since Gardner does not teach signaling the first and second types of communication devices, it cannot possibly teach that the signaling is done to control the setting up and/or clearing of the communications link. Applicants submit that Examiner has failed to consider the entire claim limitation in his rejection.

The Examiner has supported his assertions by arguing that a switching system is a type of communication device and that a "communication device" is a broad term. The Examiner also asserted that Gardner does indeed teach signaling two types of communication devices because Gardner teaches that elements 206 and 208 are different types of devices. Applicants respectfully disagree with this assertion.

First, Applicants respectfully disagree that the use of the phrase "communication device" is broad enough in claim 1 to encompass a switching device. As evidence of this, claim 1 actually recites an additional element which is a switching device. Although not exactly the same as the situation which evokes the Doctrine of Claim Differentiation, the patentee is entitled to be its own lexicographer, and if the patentee claims both a communication device and a switching device as

two distinctly different claim elements, the presumption should be that these are different types of devices. Further, merely because a switching system may be part of a telecommunication system does not mean that it is a communication device *per se*. The Examiner seems to be basing his rejection on this presumption, which is incorrect.

Further, the claim recites two different types of communication devices. If the Examiner is asserting that a switching device is a type of communication device, then another switching device, even if it is different than the first switching device, is the *same* type of communication device, i.e., a switching device. Thus, even given the Examiner's overly broad interpretation of a "communication device," Gardner still fails to teach or suggest the claimed features. It is simply a matter of fact that the claim itself distinguishes between two entities, having different functions and inter-working with each other, so that the same and single device cannot be read as both (a switch and a communication device) at the same time.

Claim 1 also recites "the signaling takes place from a central device." According to Gardner, signaling does not originate from the signal processor and does not take place in the processor. Rather, the signal processor taught by Gardner merely receives and processes call signaling (see col. 2, line 7 to 9).

The Examiner asserts that the broad claim language "signaling takes place from" does not indicate clearly that the signaling originates at the central device. Applicants strongly disagree. The Examiner is ignoring the plain language of the claim. The claim clearly recites that the signaling takes place from a central device. This can not possibly be read as anything other than Applicants' interpretation and there is no possible way a reasonable person would take the view that the signaling originates from anywhere *other* than the central device in accordance with the meaning of the word "from." Applicants respectfully request reconsideration of this rejection.

The remaining claims are allowable for the reasons set forth above.

II. CONCLUSION


The anticipation rejection of claims 1-17 should be withdrawn as explained above.

In light of the above, a Notice of Allowance is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees in connection with the filing of this document to **Deposit Account No. 03-1952**, referencing Docket No. **44912205500**.

Dated: June 22, 2007

Respectfully submitted,

By 

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